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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

Re: SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma (CC Docket 97-121)

Dear Mr. Caton:

Pursuant to the FCC's Public Notice DA 97-864, released April 23, 1997, enclosed for filing in the above-referenced docket are the original and eleven copies of the "Comments of WorldCom on ALTS Motion to Strike." We have also enclosed a diskette in WordPerfect 5.1 format.

Please return a date-stamped copy of the enclosed (copy provided)

Respectfully submitted,

Linda L. Oliver

Linda L. Oliver
Counsel for WorldCom, Inc.

Enclosures
cc: Regina Keeney, Chief, Common Carrier Bureau
Donald J. Russell, U.S. Department of Justice
Court Clerk, Oklahoma Corporation Commission
ITS, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Oklahoma	)	CC Docket No. 97-121

COMMENTS OF WORLDCOM, INC. IN SUPPORT OF ALTS MOTION TO DISMISS

WorldCom, Inc. ("WorldCom"), by its attorneys, submits these comments in support of the motion of the Association for Local Telecommunications Services ("ALTS") to dismiss the application of SBC Communications, Inc. and its affiliates ("SBC") to provide in-region, interLATA service in Oklahoma pursuant to Section 271 of the Telecommunications Act of 1996 (the "Act"). 1/

SUMMARY

WorldCom agrees with ALTS that the Commission should dismiss SBC's application, on the following grounds. First, SBC has failed to make the basic demonstration that competing carriers are serving residential customers predominantly over their own facilities as required by Section 271(c)(1)(A) of the Act

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1/ 47 U.S.C. § 271. These comments are filed in response to the Commission's Public Notice, DA 97-864 (released April 23, 1997).

("Track A"). Second, SBC is ineligible to file an application pursuant to Section 271(c)(1)(B) of the Act ("Track B") because it has not alleged either (1) that carriers have not requested interconnection or (2) that those who have requested interconnection have failed to bargain in good faith or to implement interconnection agreements.

Dismissal is appropriate in these circumstances. The FCC should make it clear that it will not tolerate the filing of Section 271 applications that, on their face, fail the express standards of Section 271. Such applications squander the limited resources of regulators and interested parties alike, and divert their attention from the important effort of implementing the local competition provisions of the Act. While there are many issues raised by SBC's application, the Commission need only act based on the facial invalidity of the application as described by ALTS.

In these comments, WorldCom takes this opportunity to address the legal and policy issues governing when a BOC may file an application pursuant to Section 271(c)(1)(B) of the Act (commonly known as "Track B"). Because SBC has received requests for interconnection from carriers in Oklahoma, it must comply with the more stringent showing required by Section 271(c)(1)(A) ("Track A") -- a real world demonstration that local exchange competition is working. Only if SBC can show that requesting carriers have failed to negotiate in good faith, or have failed to implement their agreements, can SBC pursue the Track B avenue.

We show below that neither the specific wording of the statute nor the legislative history supports SBC's view of Section 271. SBC's interpretation of the statute -- that a BOC may proceed under Track B, even if competitive carriers have requested interconnection arrangements, if the BOC is unable to meet the Track A test 2/ -- would read Section 271(c)(1) (A) right out of the Act. This statutory interpretation also is flatly contrary to the public policy goals and structure of the Act, as we show below.

The Commission should dismiss SBC's application.

I. SBC'S "TRACK A" APPLICATION SHOULD BE DISMISSED BECAUSE THERE IS NO COMPETITOR PROVIDING SERVICE TO RESIDENTIAL CUSTOMERS IN OKLAHOMA.

The Commission should dismiss SBC's application insofar as it purports to be an application filed under Track A of Section 271. Section 271(c)(1)(A) requires a BOC to demonstrate that all of the following conditions are satisfied: (1) that the BOC has entered binding interconnection agreements, approved by the state commission under Section 252, with one or more unaffiliated, competing carriers; (2) that such carriers are providing local exchange service (defined to exclude exchange access and cellular service) to business and residential subscribers; and (3) that the local exchange service provided by such carriers is offered "either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange facilities . . . ." 3/ ALTS has

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2/ SBC Brief at 14-15.

3/ 47 U.S.C. § 271(c)(1)(A).

shown convincingly that SBC has failed to satisfy at least two of these criteria, and thus that the application must be dismissed.

As ALTS has demonstrated, there is no unaffiliated competing carrier in Oklahoma providing local exchange service to residential subscribers.4/ Brooks Fiber, the only competitor upon which SBC relies in its application, 5/ does not provide or offer local exchange service to residential customers. 6/ The four Brooks employees with test circuits into their homes are not "subscribers" and are not receiving "service," as required by Section 271(c)(1)(A). Rather, they are Brooks employees receiving service free of charge under a testing program. 7/ The Commission need not reach, therefore, other independent grounds for dismissing SBC's application. For example, service to customers via resale does not constitute service over a carrier's "own facilities," as the statute's language makes plain. 8/

4/ ALTS Motion at 2-4 & attached affidavits.

5/ SBC Brief at 9.

6/ Affidavit of John C. Shapleigh, Executive Vice President, Brooks Fiber Properties, at 1 (submitted with ALTS Motion).

7/ Affidavit of John C. Shapleigh, Executive Vice President, Brooks Fiber Properties, at 1 (submitted with ALTS Motion); Letter from Edward J. Cadieux, Director-Regulatory Affairs, Brooks Fiber Properties, to Martin E. Grambow, VP & General Counsel, SBC Telecommunications, Attachment A at 2 (included as attachment to Shapleigh affidavit); Brooks OCC Comments at 2 (included as Attachment B to Shapleigh affidavit).

8/ 47 U.S.C. § 271(c)(1)(A). The Conference Report accompanying the Act goes out of its way to state that pure resale of BOC services does not constitute facilities-based service under Section 271(c)(1)(A). See Telecommunications Act of 1996, Conference Report, H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. at 146 (1996) ("Conference Report") at 148 ("the conference agreement includes the 'predominantly over their own telephone exchange service facilities' requirement to

Section 271(c)(1)(A) requires an applicant to show that competitors are serving residential (not just business) customers "exclusively . . . or predominantly over their own telephone exchange service facilities." However, given SBC's improper reliance on test residential customers, all of whom are employed by Brooks, the Commission need not address this and other "Track A" issues raised by SBC's application in order to grant ALTS' motion to dismiss.

In sum, assuming that SBC does not successfully refute the accuracy of the facts stated in Brooks Fiber's affidavits regarding the nature of the residential resale test, the Commission should dismiss SBC's application because it fails, on its face, to meet the requirements of Section 271(c)(1)(A).

II. SBC'S INTERPRETATION OF SECTION 271(C)(1)(B) IS FLATLY CONTRARY TO THE STRUCTURE AND PURPOSE OF THE 1996 ACT.

The 1996 Act reflects a basic policy choice in favor of competition by all players in all telecommunications markets. The Act recognizes, however, that local exchange competition cannot develop unless incumbent local exchange carriers ("ILECs") provide their competitors access to their ubiquitous networks, including the right to use individual unbundled network elements and combinations of such elements, at reasonable rates, terms, and conditions. 9/ Anticipating the ILECs' incentive and ability to create obstacles and delays in implementing these

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ensure a competitor offering service *exclusively through the resale of the BOC's telephone exchange service does not qualify . . .*") (emphasis added).

9/ See, e.g., 47 U.S.C. § 251(c)(3).

requirements, the Act creates a powerful incentive for BOCs to cooperate with their prospective competitors: it conditions the removal of the MFJ in-region interLATA restriction upon full compliance with the pro-competitive requirements listed in the Section 271(c)(2)(B) checklist.

Most significantly, the Act requires that BOC compliance with the competitive checklist must be tested by real world experience. Under Section 271(c)(1)(A), the BOC must actually be providing access and interconnection to a competing carrier that itself is actually providing local exchange service to residential and business customers. 10/ This statutory "reality test" is similar to the Commission's decision under its pre-existing authority that collocation must not only be offered, but must be "operational" (i.e., in use by competitors), before local exchange carriers would be allowed greater pricing flexibility. 11/ Thus, under the Act, implementation of the prerequisites to local competition is to be real, not merely theoretical, and must be tested by a competitor's actually using the BOC's access and interconnection offerings to provide local exchange service to residential and business customers.

10/ 47 U.S.C. § 271(c)(1)(A). See Conference Report at 148 ("The requirement that the BOC 'is providing access and interconnection' means that *the competitor has implemented the agreement* and *the competitor is operational.*) (emphasis added). This point is discussed more fully in the next section of these comments.

11/ Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369,7451-58 (1992), rev'd in part on other grounds sub nom. Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994).

The Act provides only a narrow exception to this "reality test" for whether a BOC has satisfied the local competition prerequisites. This exception, known as "Track B" and embodied in Section 271(c)(1)(B), recognizes the possibility that, in some states, no competing carriers might have requested interconnection within a timely period after the enactment of the Act, or that no such carrier is negotiating in good faith or is implementing an interconnection agreement in a timely manner.

As SBC concedes, numerous carriers have requested access and interconnection in Oklahoma. 12/ SBC nevertheless seeks to avoid having to satisfy the clear requirements of the "competitive presence test" of Section 271(c)(1)(A) by filing this application well before it can meet that test, and then asserting that it has a right therefore to file under Track B. SBC should not be permitted to escape its obligation to fully satisfy the Track A requirements.

III. THE LANGUAGE OF THE STATUTE AND THE LEGISLATIVE HISTORY CONFIRM THAT SBC MAY NOT PROCEED UNDER TRACK B IN OKLAHOMA.

A plain reading of the statutory language of Section 271(c)(1) confirms that Track B is available only under certain circumstances, none of which are present here. Specifically, to qualify under Track B, a BOC must obtain a state commission ruling (1) that no carriers have requested "access or interconnection" or,

12/ SBC Brief at 4-6. SBC does not allege that any carrier has failed to negotiate in good faith or to implement an interconnection agreement in a timely manner.

(2) that those who have requested interconnection have failed to bargain in good faith or to implement interconnection agreements. 13/ SBC has not obtained such a ruling, nor has it even alleged that either of these circumstances applies here. SBC is therefore ineligible to apply for interLATA authority under Track B.

SBC argues, however, that even if a carrier has requested interconnection within the specified statutory time frame, SBC nevertheless may pursue a Track B application. SBC's approach depends entirely upon a strained reading of the following phrase in Section 271(c)(1)(B): "no such provider has requested the access and interconnection described in subparagraph (A)." This phrase does not, as SBC argues, incorporate subparagraph (A)'s specific descriptions of what competing carriers must be doing for the BOC to pass the Track A "reality test" (the presence of predominantly facilities-based providers of local exchange service to residential and business subscribers). Rather, subparagraph (A) explicitly states that its test applies only "[f]or the purpose of this subparagraph" -- i.e., *not* for the purpose of subparagraph (B). SBC would contort the meaning of "such provider" in a way that would have the effect of negating the test incorporated in subparagraph (A).

Instead, the most natural reading of the phrase "no such provider has requested the access and interconnection described in subparagraph (A)" in Section 271(c)(1)(B), and the reading most consistent with the statutory scheme and the

13/ 47 U.S.C. § 271(c)(1)(B).

structure of Section 271, is that it means simply that no prospective local exchange competitor has submitted a request for access or interconnection.

The legislative history confirms that Congressional intent behind Section 271(c)(1)(B) contradicts SBC's interpretation of that provision. The definitions in Section 271(c)(1)(A) and (B) were among the hardest fought provisions in the entire 1996 Act, and there is ample discussion in the legislative record confirming the interpretation discussed above. For example, the Conference Report states that:

> For purposes of new section 271(c)(1)(A), the BOC must have entered into one or more binding agreements under which it is providing access and interconnection to one or more competitors providing telephone exchange service to residential and business subscribers. The requirement that the BOC "is providing access and interconnection" means that the competitor *has implemented the agreement* and *the competitor is operational.* 14/

In a similar vein, the House Report on the predecessor to Section 271(c)(1)(A), which was virtually identical to the current version, stated that the existence of "a facilities-based competitor that is providing service to residential and business subscribers . . . . is the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition." 15/ This clear Congressional commitment to the presence of facilities-based competitors

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14/ Conference Report at 148 (emphasis added).

15/ H.R. Rep. No. 204, 104th Cong., 1st Sess. 76-77 (1995) ("House Report"). See Conference Report at 147 (stating that the adopted text "comes virtually verbatim from the House amendment").

as a prerequisite to BOC in-region interLATA entry directly contradicts SBC's argument that it may proceed under Track B in Oklahoma.

Nor may SBC pursue both Tracks under the same set of facts. The legislative history demonstrates that the two tracks are mutually exclusive. The Conference Report paraphrases the statutory language by stating that the BOC must meet

> either of the following[:] pursuant to [subparagraph (A)], the presence of a facilities-based competitor; or pursuant to [subparagraph (B)], a statement of the terms and conditions the BOC would make available . . ., if *no provider* had requested access or interconnection within three (3) months prior to the BOC filing 16/

The use of the "either . . . or . . ." terminology excludes the notion advanced by SBC 17/ that a BOC could pursue both Track A and Track B simultaneously.

Under SBC's approach, "Track A" apparently would apply only in the context of a request for access and interconnection from an *existing* competitive local exchange carrier that is somehow supposed to be *already* providing service to residential and business customers predominantly over its own facilities *before* submitting such a request. 18/ As SBC states:

16/ Conference Report at 146 (emphasis added)(describing language in the House bill that was the predecessor to Section 271); see also id. at 147 (stating that the adopted text "comes virtually verbatim from the House amendment").

17/ See SBC Brief at 15 n.15.

18/ SBC Brief at 14-15 & n.15. SBC states that the Track B "route is available where no CLEC that is a qualifying, facilities-based telephone exchange competitor for purposes of subsection (A) 'has requested' access and interconnection." SBC Brief at 14, citing Section 271(c)(1)(B).

> To prevent interLATA entry under subsection (B), however, the requesting local exchange competitor may not simply anticipate building facilities and seek interconnection in anticipation of that day. Rather, it must actually *be* "such provider" described in subsection (A). 19/

SBC's view of Section 271(c)(1)(B) is completely illogical. Competitive entrants do not emerge fully grown at birth, or upon arrival in a new market, and the Act did not expect them to do so. Rather, competitors need to be able to purchase interconnection and unbundled network elements *before* they can provide local exchange service, and some time interval inevitably will be required from the time of the request to the reaching of an agreement to the implementation of the agreement to the actual provision of local exchange service. The structure of Section 271 (c)(1) recognizes this reality. As the Conference Report observes, the competitors described in Section 271(c)(1)(A) are only *potential* competitors at the time of requesting interconnection:

> [I]t is important that the Commission rules to implement new section 251 be promulgated within 6 months after the date of enactment, so that *potential* competitors will have the benefit of being informed of the Commission rules in requesting access and interconnection before the statutory window in new section 271(c)(1)(B) shuts. 20/

Moreover, as ALTS correctly points out, 21/ the caveats in Section 271(c)(1)(B) -- failure to negotiate in good faith and failure to stick to an agreed-upon

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19/ SBC Brief at 14 (emphasis added; citations omitted).

20/ Conference Report at 148-49.

21/ ALTS Motion at 5.

implementation schedule -- are proof that Congress expected that negotiation and implementation of agreements would take time. SBC would short-circuit this entire statutorily-prescribed process. 22/

22/ The full absurdity of SBC's interpretation of "such provider" in Section 271(c)(1)(B) is revealed by examining the legislative roots of Section 271(c)(1). That section is derived from Section 245(a)(2) of the version of H.R. 1555 that was adopted by the House Committee on Commerce. Pursuant to that version, a BOC was required to show (A) that it was providing access and interconnection to an "unaffiliated competing provider of telephone exchange service that is comparable in price, features, and scope and that is provided over the competitor's own network facilities to residential and business subscribers," or (B) that "no such provider had requested such access and interconnection . . ." H.R. 1555 (as reported to the House by the House Committee on Commerce, May 15, 1995). On the House floor, the first part of this test was modified to the form substantially found in the Act and the second part was left unchanged; both were subsequently adopted virtually unchanged by the Committee of Conference.

Applying SBC's interpretation of the term "such provider" to this earlier version of the legislation, a BOC could have used Track B if it had not received a request for access and interconnection from a competitor with a fully operational network and offering services that are comparable in price, features and scope to that of the BOC. Clearly this is not what the Commerce Committee intended, because the Committee knew that no local competitor would, or could, have met the requirements of Track A within the time frames of Track B.

Significantly, even Representatives Dingell and Tauzin did not believe that the Commerce Committee language would simply result in the BOCs proceeding under Track B. Instead, they expressed concern that the BOC would have to "wait to apply for long distance relief until some competitor has duplicated the Bell Company's network and offers service of comparable 'scope' throughout the service territory of the [BOC]." House Report at 210. (This earlier expression of concern by Representative Tauzin undermines his later statement, quoted by SBC in its Brief at 14, regarding the meaning of the term "such provider." See 141 Cong.Rec. H.8425, H8458 (daily ed., Aug. 4, 1995)(Statement of Rep. Tauzin).)

Just as Representatives Dingell and Tauzin stated was the case with the original language, under the language ultimately enacted, once a BOC has received a request for interconnection, it must wait to apply for long distance relief until a competing provider of telephone exchange service is providing both residential and business service either exclusively or predominantly over its own facilities. The

SBC's interpretation of Section 271(c)(1)(B) ignores the whole point of Section 271 -- to create the strongest possible incentive for BOCs to cooperate in facilitating local competition before allowing them to provide in-region interLATA service.

IV. SBC'S READING OF SECTION 271 WOULD READ THE COMPETITIVE PRESENCE TEST OF "TRACK A" OUT OF THE ACT.

SBC's interpretation of Section 271(c)(1)(B) is inconsistent not just with the plain language of the Act and with its structure and purpose, it also must be rejected because it would read Track A's competitive presence test right out of the Act. Put differently, SBC's reading of the "Track B" exception would broaden that exception so far that it would swallow the "Track A" rule, and would obliterate the "reality test" for the presence of facilities-based competitors embodied in Track A.

SBC contends, in essence, that a BOC can pursue the Track B route whenever it has failed the Track A test. Under this illogical interpretation, the farther a BOC is from encouraging local competition to develop, the easier it would be for the BOC to gain interLATA entry. By frustrating the ability of requesting carriers to become facilities-based local exchange service providers, SBC could reap the reward of being permitted to prove its checklist compliance merely by pointing to a paper offering -- the statement of generally available terms ("SGAT") -- rather

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BOC does not have the option under such circumstances of proceeding under Track B.

than having to demonstrate real world compliance through access and interconnection provided to real competitors. Congress could not have intended that Section 271 would have such a perverse meaning. SBC's argument ignores the fundamental *quid pro quo* underlying Section 271 -- that compliance with the preconditions to local competition, verified by the presence of an operational facilities-based competitor, must occur *prior to* interLATA entry.

The Commission should act decisively to protect the integrity of Track A under Section 271. Once any carrier has presented a BOC with a bona fide request for interconnection, unbundled elements, or other Section 251/252 offerings, with a good faith view toward using that interconnection or other offering to provide local exchange service as described in Section 271(c)(1)(A), the Commission must ensure that the Track A standard, and *not* the narrow Track B exception, will be used to judge whether the real world effect of the BOC's interconnection offering is to implement operational local exchange competition.

CONCLUSION

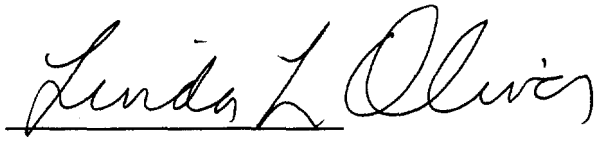
The Commission must draw a hard line against attempts by SBC or any other BOC to eviscerate the framework of Section 271, by being allowed to pursue a "Track B" alternative or hybrid interLATA entry application when they fail to meet the "competitive presence" test of Section 271(c)(1)(A). The plain language of the statute, the structure of the Act, and the intent of Congress dictate that "Track B" is not available to BOCs that are unable to meet Track A's requirements. Rather, Track B is available only when, as Section 271 (c)(1)(B)

provides, either (1) no carrier has requested interconnection or (2) if carriers have requested interconnection, they have failed to negotiate in good faith or have failed to implement an interconnection agreement.

SBC does not allege that any of these prerequisites to a Track B application exist in this case. It also has failed to meet Track A's requirements because no competitive entrant yet serves residential customers at all, much less predominantly over the entrant's own facilities. The FCC therefore must dismiss SBC's application.

Respectfully submitted,

WORLDCOM, INC.

By: 

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